RECORD, CASE No. 14,352.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 306.

THE LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY, PLAINTIFF IN ERROR,

vs.

HUGH FINAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED OCTOBER 20, 1890.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 25, 1893.

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1 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Northern Division of the Western District of Michigan, of the May Term, A. D. 1889.

WESTERN DISTRICT OF MICHIGAN, *ss*:

The Lake Superior Ship Canal, Railway and Iron Company, which is a corporation of the State of Michigan, plaintiff in this suit, which said corporation is a citizen of the State of Michigan, by Ball & Hanscom, its attorneys, complains of Hugh Finan, who is a citizen of the State of Michigan, defendant, filing this declaration as commencement of suit, which is a suit arising under the laws of the United States:

For that whereas the said plaintiff heretofore, to wit, on the 18th day of March, in the year one thousand eight hundred and eighty-nine, was possessed of certain lands and premises situate in the county of Iron, in the State of Michigan, and the northern division of the western district of Michigan, known and described as follows—that is to say, the northeast quarter of section thirteen (13), in township forty-four (44) north, of range thirty-six (36) west, of the value of six thousand dollars; which said land and premises the said plaintiff claims in fee under a grant from the United States, to wit, the act of Congress approved July 3rd, 1866, entitled "An act granting lands to the State of Michigan to aid in the construction of a harbor and ship canal at Portage lake, Keweenaw county, Lake Superior, in said State," and under the selection and certification of said lands by the proper officers of the United States in accordance with said act.

And the said plaintiff being so possessed thereof, the said defendant afterward, to wit, on the 18th day of March, in the year one thousand eight hundred and eighty-nine, entered into the said premises and ejected the said plaintiff therefrom and unlawfully withholds from the said plaintiff the possession thereof, and the said defendant claims the right to hold said lands under the pre-emption laws of the United States, and that the said grant was void so far as relates to said lands; that the said act did not operate thereon; and the determination of this suit depends upon the construction of said act of Congress, which is the question in controversy therein.

To the damage of the said plaintiff of ten thousand dollars, and therefore it brings suit, etc.

BALL AND HANSCOM,
Attorneys for Plaintiff.

2 [Endorsed:] No. —. United States circuit court, western district of Michigan, northern division. Lake Superior Ship Canal, Railway and Iron Company *v.* Hugh Finan. *Narr.* To the within-named defendant: Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of this suit a rule was entered in the book of common rules kept by

the clerk of said court in his office, in the city of Marquette, in the county of Marquette, in said district, requiring you to plead to said declaration within twenty days after the service upon you of a copy thereof and notice of said rule, or judgment, etc. Yours, etc., Ball & Hanscom, attorneys for pl'ff. Dated March 21, 1889. Filed March 21, 1889. F. M. Moore, dep. clerk.

3 In the Circuit Court of the United States for the Sixth Circuit and Western District of Mich., Northern Division.

LAKE SUPERIOR SHIP CANAL, RAILWAY & IRON COMPANY
vs.
HUGH FINAN.

On filing declaration in this cause as commencement of suit, according to the statute in such case made and provided, and on motion of Ball & Hanscom, attorneys for plaintiff, it is ordered that defendant appear and plead to said declaration within twenty days after service upon him of a copy thereof and notice of this rule, or judgment, etc.

Dated and entered March 21st, 1889.

BALL & HANSCOM,
Att'ys for Pl'ff.

F. M. MOORE, *Dep. Clerk.*

4 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Northern Division of the Western District of Michigan, of the May Term, A. D. 1889.

WESTERN DISTRICT OF MICHIGAN, *ss:*

The Lake Superior Ship Canal, Railway and Iron Company, which is a corporation of the State of Michigan, plaintiff in this suit, which said corporation is a citizen of the State of Michigan, by Ball & Hanscom, its attorneys, complains of Hugh Finan, who is a citizen of the State of Michigan, defendant, filing this declaration as commencement of suit, which is a suit arising under the laws of the United States:

For that whereas the said plaintiff heretofore, to wit, on the 18th day of March, in the year one thousand eight hundred and eighty, was possessed of certain lands and premises situate in the county of Iron, in the State of Michigan, and the northern division of the western district of Michigan, known and described as follows—that is to say, the northeast quarter of section thirteen (13), in township forty-four (44) north, of range thirty-six (36) west, of the value of six thousand dollars; which said land and premises the said plaintiff claims in fee under a grant from the United States, to wit, the act of Congress approved July 3rd, 1866, entitled "An act granting lands to the State of Michigan to aid in the construction of a harbor and ship canal at Portage lake, Keweenaw county, Lake Superior, in said State," and under the selection and certifi-

cation of said lands by the proper officers of the United States in accordance with said act.

And the said plaintiff being so possessed thereof, the said defendant afterward, to wit, on the 18th day of March, in the year one thousand eight hundred and eighty-nine, entered into the said premises and ejected the said plaintiff therefrom and unlawfully withholds from the said plaintiff the possession thereof, and the said defendant claims the right to hold said lands under the pre-emption laws of the United States, and that the said grant was void so far as relates to said lands; that the said act did not operate thereon; and the determination of this suit depends upon the construction of said act of Congress, which is the question in controversy therein.

To the damage of the said plaintiff of ten thousand dollars, and therefore it brings suit, etc.

BALL AND HANSCOM,
Attorneys for Plaintiff.

5 [Endorsed:] No. —. United States circuit court, western district of Michigan, northern division. Lake Superior Ship Canal, Railway and Iron Company *v.* Hugh Finan. *Narr.* To the within-named defendant: Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of this suit a rule was entered in the book of common rules kept by the clerk of said court in his office, in the city of Marquette, in the county of Marquette, in said district, requiring you to plead to said declaration within twenty days after the service upon you of a copy thereof and notice of said rule, or judgment, etc. Yours, etc., Ball & Hanscom, attorneys for pl'ff. Dated March 21, 1889. Filed April 8th, 1889. F. M. Moore, dep. clerk.

UNITED STATES OF AMERICA,
Western District of Michigan, Northern Division. }

STATE OF MICHIGAN,
County of Iron, } *ss:*

Zebina McColman, being duly sworn, says that on the thirtieth day of March, A. D. 1889, he served the declaration of which the within is a copy on Hugh Finan, the defendant named in said declaration, by delivering to said defendant, in the county of Iron, in said district and division, a true copy thereof, with a true copy of the notice to appear and plead endorsed thereon as is hereon endorsed.

ZEBINA McCOLMAN.

Subscribed and sworn to before me this third day of April, A. D. 1889.

W. T. CARPENTER,
Notary Public for said County of Iron.

6 (*Plea.*)

Circuit Court of the United States for the Western District of Michigan, Northern Division.

THE LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY, Plaintiff,
vs.
HUGH FINAN, Defendant.

The defendant, Hugh Finan, by Mapes & Kinkade, his attorneys, comes and demands a trial of the matters set forth in the plaintiff's declaration.

MAPES AND KINKADE,
Attorneys for Defendant.

Filed April 12, 1889.
F. M. MOORE,
Dep. Clerk.

7 (*Substitution of Attorneys.*)

Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division.

LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY, Plaintiff,
vs.
HUGH FINAN, Defendant.

We hereby consent that G. T. Thorn be substituted in our place as the attorney of record for defendant in the above-entitled action.

MAPES & KINKADE,
Def't- Att'ys.

Filed July 20, 1889.
F. M. MOORE,
Dep. Clerk.

8-11 (Order commencing trial and appointing reporter and orders continuing trial omitted here in printing per stipulation. See printed Record in Cunningham case, No. 1486, pp. 38, 39, and 40.)

12 UNITED STATES OF AMERICA:

Adjourned May Term, A. D. 1890.

SATURDAY, *July* 26, 1890.

Court met pursuant to adjournment.
Present: Hon. Henry F. Severens; present: Hon. George R. Sage, U. S. dist. judges.

LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY
vs.
HUGH FINAN.

The jury heretofore duly impannelled, tried, and sworn in this cause sat together and heard the conclusion of the arguments of counsel, and under instructions from the court and without leaving their panel say, upon their oath, that the said defendant is not guilty of unlawfully withholding the lands and premises as described in the plaintiff's declaration; and on motion of plaintiff and by consent of defendant it is ordered that three months be allowed the plaintiff to prepare and present for signature a bill of exceptions in this cause, and that all further proceedings therein be stayed until expiration of that time.

And it is further ordered that the said parties, plaintiff and defendant, refrain from committing any waste, by cutting timber or otherwise, during the period aforesaid, and if this cause shall be removed to the Supreme Court, then until the decision thereof, unless ordered by this court or a judge thereof.

13–257 (Opinion and charge of the court, Exhibits A and B—maps—and bill of exceptions omitted here in printing per stipulation. See printed Record in Cunningham case, No. 305, O. T., 1893, pp. 41, 42, and 43 to 188, incl.)

258 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Northern Division of the Western District of Michigan.

LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY, Plaintiff,
vs.
HUGH FINAN, Defendant.

To the Honorable Henry F. Severens, judge of the circuit court of the United States for the said district:

Now comes The Lake Superior Ship Canal, Railway and Iron Company, plaintiff, by Ball & Hanscom, its attorneys, and complains that in the record and proceedings, and also in the rendition of judgment in a suit between The Lake Superior Ship Canal, Railway and Iron Company, plaintiff, and Hugh Finan, defendant, in a plea of ejectment tried in the circuit court of the United States for said northern division of the western district of Michigan, at the July term thereof, A. D. 1890, and in which judgment was rendered against the said plaintiff and in favor of the said defendant on the twenty-sixth day of July, A. D. 1890, manifest error hath intervened, to the great damage of the said plaintiff. Wherefore

said plaintiff prays for a writ of error and such other proceedings as may cause the same to be corrected by the supreme court.

Marquette, September 27, A. D. 1890.

BALL AND HANSCOM,
Attorneys for Plaintiff.

Filed Sept. 30, 1890.
F. M. MOORE, *Dep. Clerk.*

[Endorsed:] The circuit court of the U. S. for the northern div. of the western dist. of Michigan. Lake Superior Ship Canal, Railway and Iron Company, pl'tff, *vs.* Hugh Finan, def'd't. Petition. (Copy.) Ball & Hanscom, att'ys for pl'tff below.

259 UNITED STATES OF AMERICA:

The Supreme Court.

LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY, Plaintiff,
vs.
HUGH FINAN, Defendant.

Know all men by these presents that we, the Lake Superior Ship Canal, Railway and Iron Company, of the State of Michigan, as principal, and John M. Longyear and Dan. H. Ball, as sureties, are held and firmly bound unto the above-named defendant in the sum of five hundred dollars, to be paid to the said defendant, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this thirtieth day of September, A. D. 1890.

Whereas the above-named plaintiff has prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment in the above-entitled action rendered by the circuit court of the United States for the northern division of the western district of Michigan:

Now, therefore, the condition of this obligation is such that if the above-named Lake Superior Ship Canal, Railway and Iron
260 Company shall prosecute its said writ of error to effect and answer all damages and costs if it shall fail to make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

LAKE SUPERIOR SHIP CANAL,
RAILWAY AND IRON CO.,
By J. M. LONGYEAR, *Ag't.* [SEAL.]
J. M. LONGYEAR. [SEAL.]
DAN. H. BALL. [SEAL.]

UNITED STATES OF AMERICA, *Western District of Michigan,* } *ss:*

——, ——, of said district, being duly sworn, do depose and say each for himself that he is worth the sum of one thousand dollars over and above all just debts and liabilities.

J. M. LONGYEAR.

Subscribed and sworn to before me this 30th day of September, A. D. 1890.

E. A. SKINNER,
Notary Public, Marquette Co., Mich.

I approve of the above bond and the sufficiency of the sureties thereto.

Dated September 30th, A. D. 1890.

H. F. SEVERENS,
District Judge.

(Filed Sept. 30, 1890.
F. M. MOORE,
Dep. Clerk.)

[Endorsed:] Supreme Court of the United States. Lake Superior Ship Canal, Railway and Iron Co., pl'tff, *vs.* Hugh Finan, def'd't. Bond. (Copy.) Dan. H. Ball, att'y for pl'tff in error.

261 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Northern Division.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I, Charles L. Fitch, clerk of said court, do hereby certify that the annexed and foregoing is a true transcript of the records and files of the cause therein entitled; that I have compared the same with the original record and files remaining in my office, and it is a true transcript thereof and of the whole of such originals.

The original writ of error, citation, and assignment of errors are also hereto annexed.

Seal of the U. S. Circuit Court, Western District of Mich., Northern Division.

In witness whereof I have hereunto set my hand and affixed the seal of said court this thirtieth day of September, in the year one thousand eight hundred and ninety.

CHARLES L. FITCH, *Clerk,*
By F. M. MOORE, *Deputy Clerk.*

262 UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the circuit court of the United States for the northern division of the western district of Michigan, Greeting:

Because in the record and proceedings, and also in the rendition of judgment of a plea which is in the said circuit court, before you,

Honorable Henry F. Severens and Honorable George R. Sage, district judges, sitting in the circuit court, between The Lake Superior Ship Canal, Railway and Iron Company, a corporation of the State of Michigan, plaintiff, and Hugh Finan, defendant, in a plea of ejectment, manifest error hath happened, to the great damage of the plaintiff, as by his complaint appears, we, being willing that error, if any hath been made, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

263 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety.

{ Seal of the U. S. Circuit Court, Western District of Mich., Northern Division. }

CHARLES L. FITCH,
Clerk of the Circuit Court of the United States for the Northern Division of the Western District of Michigan,
By FRANCIS M. MOORE,
Deputy Clerk.

DAN. H. BALL,
IRVING D. HANSCOM,
Attorneys for Pl'ff in Error.
JOHN F. DILLON, *Of Counsel.*

Allowed Sept. 30, 1890.
H. F. SEVERENS,
District Judge.

WESTERN DISTRICT OF MICHIGAN, *ss:*

To the justices of the Supreme Court of the United States:

The return to this writ appears by the schedules thereunto annexed.

The answer of the judges of the circuit court of the United States for the western district of Michigan.

CHARLES L. FITCH,
Clerk of said Court,
By F. M. MOORE,
Deputy Clerk.

(Filed Sept. 30, 1890.
F. M. MOORE, *Dep. Clerk.*)

[Endorsed:] The Supreme Court of the United States. Lake Superior Ship Canal, Railway and Iron Company, pl't'ff, *vs.* Hugh Finan, d'f'd't. Writ of error. Dan. H. Ball, att'y for pl't'ff in error.

264 UNITED STATES OF AMERICA, *ss:*

To Hugh Finan, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington on the second Monday of October, A. D. 1890, pursuant to the writ of error filed in the clerk's office of the circuit court of the United States for the sixth circuit and northern division of the western district of Michigan, wherein The Lake Superior Ship Canal, Railway and Iron Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry F. Severens, district judge, acting as presiding judge of the said circuit court of the United States for said district, this thirtieth day of September, in the year of our Lord one thousand eight hundred and ninety.

H. F. SEVERENS,
District Judge.

Due service of the foregoing citation is hereby acknowledged. September 30th, 1890.

VOSPER BROS.,
Attorneys for Defendant Below.

Filed September 30, 1890.

F. M. MOORE,
Dep. Clerk.

[Endorsed:] Supreme Court of the United States. Lake Superior Ship Canal, Railway and Iron Co., pl't'ff, *vs.* Hugh Finan, def'd't. Citation. Dan. H. Ball, att'y for pl't'ff in error.

265 UNITED STATES OF AMERICA:

The Supreme Court.

LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY, Plaintiff in Error,
vs.
HUGH FINAN, Defendant in Error.
} In Error.

Of the October term, in the year of our Lord one thousand eight hundred and ninety.

Afterwards, to wit, on the second Monday of October, in this same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said

Lake Superior Ship Canal, Railway and Iron Company, by Dan. H. Ball, its attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

1. In admitting in evidence the order of the governor of Michigan, dated October 4, 1867, to issue a commission to Perez J. Avery for the selection of lands under the act of Congress granting lands to the State of Michigan to aid in the construction of the harbor and ship canal at Portage lake, approved July 3, 1866.

2. In admitting in evidence the letter of the Commissioner of the General Land Office, dated December 3, 1857, to P. H. Smith in reference to the map of definite location of the line of route of the Chicago, St. Paul and Fond du Lac railroad from Ontonagon to the State line.

3. In admitting evidence of the acceptance of the line of said railroad from Ontonagon to the State line by the Secretary of the Interior.

266 4. In admitting in evidence the map of survey of said railroad line from Marquette and Ontonagon to the State line.

5. In admitting in evidence a list of lands certified by the Commissioner of the General Land Office and approved by the Secretary of the Interior as inuring to the State of Michigan to aid in the construction of a railroad from Marquette to the Wisconsin State line.

6. In admitting in evidence a list of lands certified by the Commissioner of the General Land Office and approved by the Secretary of the Interior as inuring to the State of Michigan to aid in the construction of a railroad from Ontonagon to the State line, under act of June 3, 1856.

7. In admitting in evidence a list of lands certified by the Commissioner of the General Land Office and approved by the Secretary of the Interior as inuring to the State of Michigan to aid in the construction of said roads from Ontonagon and Marquette to the State line, and situated within the six-miles limits of said two lines of roads where they intersect and cross each other.

8. In admitting in evidence the order of the Commissioner of the General Land Office, dated May 29, 1873, for the restoration of certain lands to market, and the countermand of said order by telegraph, dated July 30, 1873.

9. In admitting in evidence the report of the Secretary of the Interior to the House of Representatives, dated March 11, 1878.

10. In admitting testimony on the part of said defendant in relation to his claim of pre-emption right to the lands involved in this case.

11. In admitting in evidence the letter of the deputy State land commissioner of the State of Michigan, dated May 14, 1890.

267 12. In admitting evidence to show that the plaintiff in this case, or the corporations from which it claims title to the lands in question, never constructed or operated any railroad under its charter.

13. In excluding the files and records of said court in the case formerly pending therein, in equity, between The Lake Superior

Ship Canal, Railway and Iron Company, complainant, and The Ontonagon and Brule River Railroad Company, defendant.

14. In refusing to instruct the jury, on request of plaintiff's counsel, "that on the pleadings and evidence in this action the plaintiff is entitled to recover, and you will find a verdict in its favor."

15. In refusing to instruct the jury, on request of plaintiff's counsel, as follows: "The plaintiff claims title and right to recover the possession of the real estate in controversy under the act of Congress of July the 3rd, 1866, entitled 'An act granting lands to the State of Michigan to aid in the construction of a harbor and ship canal at Portage lake, Keweenaw point, Lake Superior, in said State,' and under a certification of the said land to the State of Michigan for the benefit of the Portage Lake and Lake Superior Ship Canal Company by the Commissioner of the General Land Office, dated May 19th, 1871, being supplemental list No. 4, approved as follows:

'DEPARTMENT OF THE INTERIOR,
WASHINGTON CITY, D. C., 22*nd May*, 1871.

Approved, subject to the conditions and rights above mentioned.
C. DELANO, *Secretary.*'

The court instructs the jury that inasmuch as the land in question in this suit is embraced in said certification thus approved the same operated to convey the said land to the State of Michigan,
268 and under the said act the said land thus certified inured to the use and benefit of the Portage Lake and Lake Superior Ship Canal Company, whose name was afterwards changed to that of the Lake Superior Ship Canal, Railroad and Iron Company, and as the governor of the said State, on the 25th day of June, 1875, certified and determined that the said ship canal and harbor mentioned in said act of July 3rd, 1866, and in the Michigan act of March 18th, 1865, entitled 'An act to accept a grant of lands by Congress to aid in the construction of the ship canal and harbor at the head of Portage lake at its connection with Lake Superior, and to provide for the construction of the same,' and the act of the Michigan legislature of March 27th, 1867, accepting the said grant made by the said act of Congress of July the 3rd, 1866, had been constructed by said company as required by law, and as the plaintiff in this suit has shown that it has succeeded to the title and rights of the said Portage Lake and Lake Superior Ship Canal Company in and to the said land, the plaintiff is entitled to recover the possession thereof in this action from the defendant, and you will accordingly find a verdict for the plaintiff."

16. In refusing to instruct the jury, on request of plaintiff's counsel, as follows: "The supplemental list No. 4 of the said lands introduced in evidence, embracing, among other tracts, the land in question, approved by the Secretary of the Interior on the 22nd day of May, 1871, was, as against the said defendant, a valid certification of the said lands, and the defendant in this action of ejectment cannot defeat the title and right thus granted to and conferred on the State of Michigan, and through it to the said canal company, by showing

that the said lands were improperly selected, certified, and approved to the State of Michigan as aforesaid."

269 17. In refusing to instruct the jury, on request of plaintiff's counsel, as follows: "Under the said act of Congress of July 3rd, 1866, the grant of lands for the benefit of the said ship canal company was of two hundred thousand acres of land in the upper peninsula of the State of Michigan, to be selected from lands to which the right of pre-emption or homestead had not attached, which selection was to be made by an agent or agents appointed by the governor of the said State, subject to the approval of the Secretary of the Interior, which, when so selected, should inure to the use and benefit of the said ship canal company in accordance with an act of the legislature of the State of Michigan conferring the lands granted to the said State on the said company under this legislation. It is in proof that the land in question in this suit was selected to fill the said canal grant of July the 3rd, 1866, by an agent appointed by the State of Michigan, and that the said selection was approved by the Secretary of the Interior on the 22nd day of May, 1871, and the list containing the said land and the said approval were duly certified to the State of Michigan for the benefit of the said canal company. This act of July 3rd, 1866, conferred upon the Secretary of the Interior the power to determine what lands were of the description granted by the act of July the 3rd, 1866, and that decision, as embodied in the said list embracing the land now in controversy and approved by the Secretary of the Interior, and accordingly certified to the State of Michigan, is conclusive in this action of the rightfulness of the said certification and had the effect in law to place the title to the lands thus approved and certified to the State of Michigan in the State of Michigan for the benefit of the said canal company."

270 18. In refusing to instruct the jury, on request of plaintiff's counsel, as follows: "It appearing that under the joint resolution of Congress of July the 5th, 1862, entitled 'A joint resolution relative to a certain land grant for railroad purposes made to the State of Michigan in 1856,' the Chicago and Northwestern Railway Company (the successor in interest of the Ontonagon and State Line Railroad Company and of the Marquette and State Line Railroad Company, consolidated into the Chicago, St. Paul and Fond du Lac Railroad Company, and the successor in interest of the Chicago, St. Paul and Fond du Lac Railroad Company and of the Peninsula Railroad Company), by instrument dated the 14th day of June, 1870, remised, released, and quitclaimed to the said State of Michigan and its assigns all the right, title, and interest it then had or ever had in and to the lands in controversy, and that afterwards, to wit, on the 14th day of August, 1870, the governor of the State of Michigan, under the great seal thereof, filed in the General Land Office at Washington the lists of the said railroad lands, including the land in controversy in the present action, which had been theretofore selected and certified under the act of Congress of June 3rd, 1856, entitled 'An act making a grant of alternate sections of the public land in the State of Michigan to aid in the construction

of certain railroads in said State, and for other purposes,' together with a certificate, under the seal of the State, that the State and its assigns surrendered all claim to the said lands set forth and described in the lists thereof, which included the land in controversy in this action, and that the same had never been pledged, sold, or otherwise incumbered; and it further appearing that under the said joint resolution of July the 5th, 1862, the State afterwards se-
271 lected for the new line of railroad mentioned in the said joint resolution of July 5th lands in quantity greater than the lands thus surrendered, and that the lands so selected were afterwards certified by the United States to the State of Michigan for such new line and were afterwards patented by the said State of Michigan to the said Chicago and Northwestern Railway Company, the court instructs you that said lands thus relinquished and surrendered by the governor having afterwards been selected under the canal grant of July 3rd, 1866, by an agent appointed by the governor, and afterwards approved by the Secretary of the Interior and certified to the State of Michigan for the benefit of the said canal company, such certification thereof by the Secretary of the Interior was not void."

19. In refusing to instruct the jury on request of plaintiff's counsel as follows: "Said supplemental list No. 4 of lands selected by the State of Michigan under the act of Congress of July the 3rd, 1866, which was approved May 22nd, 1871, by the Secretary of the Interior, as a portion of the land to aid in the construction of the harbor and ship canal at Portage lake, Keweenaw point, to the State for the benefit of the said canal company, under said act of July 3rd, 1866, is not void on the ground that the title to said lands thus selected (which included, among other tracts, the one in controversy in this action) was in the State of Michigan, under the railroad act of June the 3rd, 1856, for the State, by reason of its acts under the joint resolution of Congress approved July the 5th, 1862, and the surrender to the United States of the said lands as railroad land under section 5 of the said joint resolution, and the subsequent selection by an agent appointed by the governor of Michigan of the said land under the canal grant of July the 3rd, 1866, in order to satisfy the State's obligation to the canal company for
272 the construction of said canal and the selection in like manner by the State of a like quantity of other lands in the place of the lands surrendered upon the originally located route for the benefit of the new line of road to the Wisconsin State line near the mouth of the Menominee river, which lands thus selected the State obtained from the United States and subsequently patented to the Chicago and Northwestern Railway Company for the construction of the said new line of railroad to or near the mouth of the Menominee river would be precluded, as against the canal company, to set up that the State held title to the said lands embraced in said supplemental list No. 4, certified and approved as aforesaid, and the defendant cannot defeat the plaintiff's title in this action by setting up that at the date of the selection of the lands in controversy under the canal grant of July the 3rd, 1866,

and at the date of the approval of the said selection by the Secretary of the Interior May 22nd, 1871, the title to the said land was in the State and not in the United States."

20. In refusing to instruct the jury on request of plaintiff's counsel as follows: "Even if, independent of the act of Congress approved the 2nd of March, 1889, entitled 'An act to forfeit lands granted to the State of Michigan to aid in the construction of a railroad from Marquette to Ontonagon, in said State,' the plaintiff had no title to the land in controversy in this action, nevertheless the said act of March the 2nd, 1889, confirms the title of the plaintiff to the said land under supplemental list No. 4 of lands selected by the State of Michigan under the act of Congress of July the 3rd, 1866, and approved by the Secretary of the Interior May 22nd, 1871, as a portion of the lands to aid in the construction of the harbor and ship canal at Portage lake, Keweenaw point, and enti-
273 tles the plaintiff to recover in this action the possession of the land in controversy against the defendant."

21. In refusing to instruct the jury on request of plaintiff's counsel as follows: "The defendant having testified on the trial and it being a conceded fact in the case that he did not settle upon or improve the land in controversy in this action or otherwise make a pre-emption claim thereon until after the 1st day of May, 1888, he is not within the provisions of the 3d section of the act of March 2, 1889, since that section of the said act only extends to a *bona fide* pre-emption claim on May 1st, 1888, arising or asserted by actual occupation of the land under color of the laws of the United States."

22. In refusing to instruct the jury on request of plaintiff's counsel as follows: "As against the defendant, the act of March 2, 1889, confirms the title and right of the plaintiff to the land in controversy under supplemental list No. 4, selected by the State of Michigan under the act of July 3, 1866, for the benefit of the canal company, which list was approved by the Secretary of the Interior May 22nd, 1871, and certified to the State of Michigan, and entitles the plaintiff to a verdict in its favor for the recovery of the land in controversy from the defendant."

23. In refusing to instruct the jury on request of plaintiff's counsel as follows: "The land in controversy having been certified and approved to the State of Michigan by the Secretary of the Interior on May 22, 1871, under the canal grant of July 3, 1866, and by the State disposed of to the canal company as part compensation for the construction of the canal, to the completion of which,
274 according to law, the governor of the State duly certified in 1875; the United States never having taken any steps to set aside the said certification and approval of the Secretary of the Interior of May 22, 1871; the State of Michigan having received, under the said joint resolution of July 5, 1862, to aid in the construction of the new line of railroad therein mentioned from Marquette to the Wisconsin State line, at or near the mouth of the Menominee river, other lands in the place of all those which were embraced in the lists surrendered by the governor to the United

States under the said joint resolution of July 5, 1862 (which lists of surrendered lands embraced and described the land in controversy in this action), and the State having afterwards patented such other lands to the Chicago and Northwestern Railway Company as having been earned by the construction of the said new line of railroad, the State not having selected any other lands for the canal company than those approved May 22, 1871, as aforesaid to the State under the canal grant or compensated the canal company for the construction of the said canal in any other way than by the lands selected for it under the act of July 3, 1866, and certified and approved to the State under such selections, such being the status of the lands in controversy on May 1, 1888, the act of March 2, 1889, does not apply to defendant's case or validate or confirm the defendant's claim thereon or thereto as a pre-emptor."

24. In ruling and declaring the opinion of the court that "the release of the title to the clear lands on the Ontonagon and State Line road, in which this tract (the northeast quarter of section thirteen (13), in township forty-four (44) north, of range thirty-six (36) west, was situated, executed by the Chicago and Northwest-
275 ern Railway Company and by the governor of the State of Michigan to the United States, was unauthorized by law, and the selection of such lands for the canal company and the certification thereof by the Secretary of the Interior was void."

25. In ruling and declaring the opinion of the court that the title of the plaintiff to the lands involved in this suit was not confirmed by the provisions of section 3 of the act of Congress approved March 2, 1889, to declare the forfeiture of certain land grants in Michigan.

26. In instructing the jury as follows: "In regard to the Finan case your verdict should be for the defendant."

27. There is also error in this: That by the record aforesaid it appears that the judgment aforesaid was given for the said defendant against the said plaintiff, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff and against the said defendant, and the said plaintiff prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that he may be restored to all things that he has lost by occasion of the said judgment, etc.

DAN. H. BALL,
IRVING D. HANSCOM,
Attorneys for Plaintiff in Error.

JOHN F. DILLON, *Of Counsel.*

Filed Sept. 30, 1890.

F. M. MOORE, *Dep. Clerk.*

276 UNITED STATES OF AMERICA:

The Supreme Court.

LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY, Plaintiff in Error,
vs.
HUGH FINAN, Defendant in Error.

Whereas the clerk of the circuit court of the United States for the northern division of the western district of Michigan in making return to the writ of error in this cause inadvertently omitted to attach thereto and embody in said return a transcript of the entry of the final judgment therein, and has, since making return to said writ of error, transmitted to the clerk of this court a transcript of said judgment entry, certified by him—

Therefore it is hereby stipulated by and between the parties hereto that the transcript of judgment entry so certified by said clerk may be attached to his return to the writ of error in this cause or filed therewith as an addition to the record and be made a part of the record of said cause with the same effect as if the same had been originally attached to and transmitted with said writ of error and return.

Dated this 7th day of November, A. D. 1890.

DAN. H. BALL,
Attorney for Pl'ff in Error.
DON M. DICKINSON,
Attorney for Def't in Error.

[Endorsed:] United States of America. Supreme Court. Lake Superior Ship Canal, Railway and Iron Company, pl'ff in error, *vs.* Hugh Finan, def't in error. Stipulation.

277 At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, continued and held at the United States court-rooms, in the city of Marquette, in said district and division, on Saturday, the twenty-seventh day of September, A. D. one thousand eight hundred and ninety, and of the year of Independence the one hundred and fifteenth.

Present: Hon. Henry F. Severens, district judge.

THE LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY
vs.
HUGH FINAN. } In Ejectment.

The jury by whom the issue in this cause was tried having rendered a verdict in favor of the defendant and against the plaintiff, therefore it is considered that the said plaintiff take nothing by its suit, and that the said defendant do go thereof without day; and it is further considered that the said defendant do recover against the

said plaintiff his costs and charges by him about his defense in this behalf expended, to be taxed, and that the said defendant have execution thereof.

278 WESTERN DISTRICT OF MICHIGAN, *Northern Division*, } ss:

I, Charles L. Fitch, clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, northern division, do hereby certify the annexed and foregoing to be a true and correct copy of the record of the judgment entered in the cause therein entitled; that I have compared the same with the original record of said judgment now remaining of record in my office; that it is a true and correct copy thereof and of the whole thereof.

Seal of the U. S. Circuit Court, Western District of Mich., Northern Division.

In witness whereof I have hereunto set my hand and affixed the official seal of said court, at the city of Marquette, in said district and division, this 30th day of September, A. D. one thousand eight hundred and ninety.

CHARLES L. FITCH, *Clerk*,
By F. M. MOORE, *Deputy Clerk*.

[Endorsed:] 1487. The circuit court of the United States for the northern division of the west. dist. of Mich. The Lake Superior Ship Canal, Railway and Iron Company *vs.* Hugh Finan. Certified copy of record of judgment.

279 [Endorsed:] Supreme Court U. S. 1890, October term. No. 1487. The Lake Superior Ship Canal, Railway & Iron Co., pl'ff in error, *vs.* Hugh Finan. Stipulation and addition to record. Filed Nov'r 11, 1890.

280 Supreme Court of the United States, October Term, 1890.

THE LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY, Plaintiff in Error, *vs.* WALTER A. CUNNINGHAM. } No. 1486.

SAME *vs.* HUGH FINAN. } No. 1487.

MICHAEL DONAHOE, Plaintiff in Error, *vs.* THE LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY. } No. 1488.

It is hereby stipulated by counsel for the respective parties in the above-entitled cases as follows, viz:

First. That these cases be heard together as one case.

Second. That the entire transcript of record in the Cunningham case (No. 1486) be printed.

Third. That only such parts of the transcripts of records in the other two cases, viz., the Finan case (No. 1487) and the Donahoe case (No. 1488), as do not appear in the Cunningham record shall be printed.

Fourth. That one-third of the cost of printing the entire record in the Cunningham case and the parts of the transcripts in the Finan and Donahoe cases, together with the clerk's fees for supervising the same, be taxed in each case.

DAN. H. BALL,
Counsel for the Lake Superior Ship Canal, R'y and Iron Co.
DON M. DICKINSON,
Counsel for Cunningham, Finan, and Donahoe.

281 [Endorsed:] Supreme Court U. S. 1890, October term. Nos. 1486, 1487, & 1488. Lake Sup'r S. C., R. & I. Co. *vs.* Cunningham, Same *vs.* Same, and Donahoe *vs.* Lake S. S. C., R. and Iron Co. Stipulation to try causes as one cause & as to printing transcripts of record & taxing costs. Filed Dec. 4. 1890.

Endorsed on cover: Case No. 14,352. W. Michigan C. C. U. S. No. 306. The Lake Superior Ship Canal, Railway & Iron Company, plaintiff in error, *vs.* Hugh Finan. Filed October 20, 1890.

The Supreme Court of the United States.

LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY,
Plaintiff in Error,
vs.
HUGH FINAN, Defendant in Error.

LAKE SUPERIOR SHIP CANAL, RAILWAY AND IRON COMPANY,
Plaintiff in Error,
vs.
WALTER A. CUNNINGHAM, Defendant in Error.

It is hereby stipulated and agreed by the parties to this cause that the "supplemental list No. 4 of lands selected by the agent of the State of Michigan," as applicable to the grant of lands to the State of Michigan, being act of Congress approved July 3, 1866, being the first document introduced in evidence on the trial of said causes, a copy of which appears on pages 82 and 83 of the original record on file in this court of the cause secondly above mentioned, contained, among other lands, the east half of section thirteen (13), in township forty-four (44) north, of range thirty-six (36) west, embracing the land involved in the cause firstly above entitled; that in drafting and settling the bill of exceptions in said causes said east half of section thirteen (13), by clerical error, was accidentally omitted from said copies so introduced as stated in said bills of exceptions.

And it is further stipulated that said bills of exceptions may be amended by inserting in the copy — said supplemental list No. 4, as set forth therein, the above description of land, so that the tabulated descriptions of land set forth in said bills of exceptions shall read as follows:

Parts of section.	Section.	Town.	Range.	Acres.
E ½ of	13	44	36	
E ½ of N. W. ¼	"	"	"	
S. W. ¼ of N. W. ¼	"	"	"	600.00
S. W. ¼	"	"	"	
All of	25	"	"	640.00

And that such amendment when so made may be made a part of the record in this cause, with the same effect as if the same had been originally incorporated into said bills of exceptions.

Dated March 15, A. D. 1894.

JOHN F. DILLON,
DAN. H. BALL,
Attorneys for Plaintiff in Error.
DON M. DICKINSON,
Attorney for Defendants in Error.

[Endorsed:] Lake Sup. Ship Canal R'y & Iron Co., pl'ff in error, *vs.* Hugh Finan, Walter A. Cunningham.

[Endorsed:] Case No. 14,351 & 14,352. Supreme Court U. S. October term, 1893. Term No., 305 & 306. The Lake Superior Ship Canal, R'y & Iron Co., P. E., *vs.* Walter A. Cunningham and same *vs.* Hugh Finan. Stipulation to amend bill of exceptions. Filed April 6, 1894.